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7 **UNITED STATES BANKRUPTCY COURT**

8 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

10 In re  
11 GIRARDI KEESE,  
12 Debtor.

Case No. 2:20-bk-21022-BR  
Chapter 7

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**CHAPTER 7 TRUSTEE'S MOTION FOR  
ORDER AUTHORIZING COMPROMISE  
OF CONTROVERSY RE BADERINK  
PURSUANT TO RULE 9019 OF THE  
FEDERAL RULES OF BANKRUPTCY  
PROCEDURE AND AUTHORIZING  
PAYMENT OF CONTINGENCY FEE TO  
SPECIAL AVOIDANCE POWER  
LITIGATION COUNSEL;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
ELISSA D. MILLER IN SUPPORT  
THEREOF**  
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DATE:  
TIME: [Hearing Only Upon Request]  
PLACE:

**1 TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE,**  
**2 THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR, AND ALL OTHER**  
**3 INTERESTED PARTIES:**

## MOTION

5 Through her “Chapter 7 Trustee’s Motion for Order Authorizing  
6 Compromise of Controversy Re BaderInk Pursuant to Rule 9019 of the Federal Rules of  
7 Bankruptcy Procedure and Authorizing Payment of Contingency Fee to Special  
8 Avoidance Power Litigation Counsel; Memorandum of Points and Authorities; Declaration  
9 of Elissa D. Miller in Support Thereof” (the “Motion”), plaintiff, Elissa D. Miller (the  
10 “Trustee” or “Plaintiff”), the duly appointed, qualified, and acting chapter 7 trustee for the  
11 estate of the debtor Girardi Keese (the “Debtor” or “Girardi Keese”) and Successor-in-  
12 Interest Trustee of the Girardi Keese Client Trust Accounts, hereby seeks, among other  
13 things, an order authorizing and approving, pursuant to Rule 9019(a) of the Federal  
14 Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 9013, a settlement  
15 agreement by and between the Trustee, on the one hand, and defendant, BaderInk, a  
16 California corporation (“BaderInk” or the “Defendant”), on the other hand.

The Motion is based on the following:

<sup>27</sup> The Petitioning Creditors also filed an involuntary chapter 7 bankruptcy petition against Thomas V. Girardi ("Thomas"), which is currently pending as Case No. 2:20-bk-21020-BR.

9 (c) On January 13, 2021, the Court entered its “Order Directing: (1) the  
10 Clerk of Court to Immediately Enter an Order for Relief Under Chapter 7; (2) the United  
11 States Trustee to Immediately Appoint a Chapter 7 Trustee; (3) the Debtor to File All  
12 Schedules and Related Documentation for Chapter 7 Case Within Fourteen Days of the  
13 Entry of This Order; and (4) Vacating February 16, 2021 Status Conference.” On  
14 January 13, 2021, the Clerk of Court entered its “Order for Relief and Order to File  
15 Schedules, Statements and List(s).” On January 13, 2021, the Office of the United  
16 States Trustee filed its “Notice of Appointment of Trustee and Fixing of Bond; Acceptance  
17 of Appointment As Interim Trustee” pursuant to which, among other things, Elissa D.  
18 Miller was appointed and accepted her appointment as chapter 7 trustee for the Debtor’s  
19 estate, and she continues to act in that capacity as well as the Successor-in-Interest  
20 Trustee of the Girardi Keese Client Trust Accounts;

21 (d) On January 4, 2023, the Trustee, as plaintiff, caused to be filed her  
22 "Complaint for (1) Avoidance and Recovery of Fraudulent Transfers, (2) Preservation of  
23 Fraudulent Transfers, and (3) Disallowance of Claims" (the "Complaint") against  
24 Defendant, giving rise to the adversary proceeding entitled Elissa D. Miller v. BaderInk,  
25 bearing Adv. No. 2:23-ap-01017-BR (the "Action"), pursuant to which the Trustee sought,  
26 among other things, to avoid and recover, under both federal and state law, certain  
27 alleged fraudulent transfers in the total aggregate amount of \$102,917;

(e) Defendant denies that the Trustee is entitled to avoid and recover funds as fraudulent transfers, under either federal or state law, as alleged in the Complaint; and

(f) On July 24, 2023, the Trustee and Defendant entered into that certain “Settlement Agreement and Mutual General Release” (the “BaderInk Agreement”) pursuant to which, in exchange for limited mutual releases, and dismissal of the Action against Defendant, with prejudice, Defendant will pay the estate the total amount of \$20,000. Defendant also agrees to waive any claim provided by 11 U.S.C. § 502(h) that may arise in connection with the settlement payment. A true and correct copy of the BaderInk Agreement is attached hereto as Exhibit “A” and incorporated herein by reference.

The Motion also seeks authority for the Trustee to pay Greenspoon Marder, LLP, special avoidance power litigation counsel for the estate, the sum of \$4,000 from the settlement proceeds, representing the 20% contingency fee authorized by the Court pursuant to its “Order Granting Chapter 7 Trustee’s Application for Authority to Employ Greenspoon Marder LLP As Special Avoidance Power Litigation Counsel Effective July 1, 2022” (the “Employment Order”) [Docket No. 1327] entered on August 26, 2022.<sup>2</sup>

This Motion is made pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 9013, on the grounds that the Trustee has determined that the BaderInk Agreement is fair, reasonable, and in the best interests of the estate and its creditors, in light of the uncertainties of litigation, the possibility that the Trustee may recover less than the settlement amount on behalf of the estate, and the fees and costs associated with prosecuting the adversary proceeding against Defendant since, among other things, (i) the BaderInk Agreement will benefit the estate by the

<sup>2</sup> In addition to a 20% contingency fee of the gross proceeds on any settled avoidance power claim, the Employment Order also authorizes the recovery of hourly fees incurred at 50% of the hourly fees then in effect. At this time, the Trustee only is seeking authority to pay the 20% contingency fee award from the settlement proceeds. The hourly attorneys' fees incurred will be sought through a separately filed fee application as required by the Employment Order.

1 infusing it with a total of \$20,000 in settlement proceeds, (ii) Defendant has agreed to  
2 waive certain claims against the estate, which will further benefit creditors, and (iii)  
3 Defendant will execute a limited mutual release of any claims, attorneys' fees, and the  
4 like, relating to the claims made in the adversary proceeding. Moreover, it is within the  
5 sound discretion and business judgment of the Trustee to enter into the BaderInk  
6 Agreement.

7                 This Motion is made and based upon the moving papers, the attached  
8 memorandum of points and authorities and the supporting declaration of Elissa D. Miller,  
9 the pleadings filed in the Debtor's case, all judicially noticeable facts, the arguments and  
10 representations of counsel, and any oral or documentary evidence presented at the time  
11 of the hearing, if any.

12                 **WHEREFORE** the Trustee respectfully requests that the Court enter an  
13 order:

14                 (1)      granting this Motion;  
15                 (2)      authorizing and approving the BaderInk Agreement pursuant to Rule  
16 9019(a) of the Federal Rules of Bankruptcy Procedure;  
17                 (3)      authorizing payment of the sum of \$4,000 from the settlement  
18 proceeds to Greenspoon Marder, LLP, special avoidance power litigation counsel for the  
19 Trustee, representing the 20% contingency fee previously approved by the Court  
20 pursuant to the Employment Order; and  
21                 (4)      granting such other and further relief as this Court deems just and  
22 proper under the circumstances.

23 DATED: July 25, 2023

**Greenspoon Marder LLP**

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By: /s/ Daniel A. Lev

Daniel A. Lev

Attorneys for Elissa D. Miller, Chapter 7  
Trustee

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

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## **PREFATORY STATEMENT**

4 During the course of her administration of the Debtor's estate, the Trustee  
5 determined that numerous parties received preferential and fraudulent transfers within  
6 the statutory time periods set forth by applicable law. As a result, the Trustee filed over  
7 100 complaints seeking the avoidance and recovery of the alleged preferential and  
8 fraudulent transfers. The Trustee now has entered into a settlement with one of the  
9 defendants, and seeks Court approval of the compromise. The Trustee believes that the  
10 settlement satisfies the prerequisites adopted by the Ninth Circuit and, therefore, the  
11 Court should defer to the Trustee's business judgment and grant the Motion.

1

## **RELEVANT BACKGROUND**

**A. Commencement of Involuntary Petition, Entry of Order for Relief, and Appointment of Chapter 7 Trustee**

On December 18, 2020 (the “Petition Date”), petitioning creditors Jill O’Callahan, as successor in interest to James O’Callahan, Robert M. Keese, John Abassian, Erika Saldana, Virginia Antonio, and Kimberly Archie (collectively, the “Petitioning Creditors”) commenced an involuntary petition for relief under chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) against Girardi Keese.<sup>3</sup>

21 On December 24, 2020, Petitioning Creditors caused to be filed their  
22 “Motion for Appointment of Interim Trustee Pursuant to 11 U.S.C. § 303(g); Memorandum  
23 of Points and Authorities.” On January 5, 2021, the Court entered its “Order Granting  
24 ‘Motion of Petitioning Creditors for Appointment of Interim Trustee Pursuant to 11 U.S.C.  
25 303(g).’” On January 6, 2021, the Office of the United States Trustee filed its  
26 “(Corrected) Notice of Appointment of Chapter 7 Trustee (11 U.S.C. §§ 303(g) and 701)”

<sup>3</sup> The Petitioning Creditors also filed an involuntary chapter 7 bankruptcy petition against Thomas V. Girardi (“Thomas”), which is currently pending as Case No. 2:20-bk-21020-BR.

1 pursuant to which, among other things, Elissa D. Miller was appointed interim chapter 7  
2 trustee for Girardi Keese's estate.

3 On January 13, 2021, the Court entered its "Order Directing: (1) the Clerk of  
4 Court to Immediately Enter an Order for Relief Under Chapter 7; (2) the United States  
5 Trustee to Immediately Appoint a Chapter 7 Trustee; (3) the Debtor to File All Schedules  
6 and Related Documentation for Chapter 7 Case Within Fourteen Days of the Entry of  
7 This Order; and (4) Vacating February 16, 2021 Status Conference." On January 13,  
8 2021, the Clerk of Court entered its "Order for Relief and Order to File Schedules,  
9 Statements and List(s)." On January 13, 2021, the Office of the United States Trustee  
10 filed its "Notice of Appointment of Trustee and Fixing of Bond; Acceptance of  
11 Appointment As Interim Trustee" pursuant to which, among other things, Elissa D. Miller  
12 was appointed and accepted her appointment as chapter 7 trustee for the Debtor's  
13 estate, and she continues to act in that capacity as well as the Successor-in-Interest  
14 Trustee of the Girardi Keese Client Trust Account.

15 **B. Uncovering the Debtor's Fraudulent Enterprise**

16 As the Trustee quickly learned after her appointment, despite all  
17 appearances, Girardi Keese was nothing more than an illicit and felonious business  
18 operated to line the pockets of Thomas, his wife, and several collaborators. While the  
19 Trustee continues to investigate the magnitude of the fraud that spanned decades, it is  
20 obvious that tens of millions of dollars of client and partnership funds were stolen and  
21 diverted to Thomas and others.

22 Emblematic of the rampant fraud and pervasive misappropriation of client  
23 and creditor funds, during a time when Girardi Keese was in a precarious financial state,  
24 and was not paying its creditors, Thomas and his co-conspirators began a systematic  
25 process of draining the available cash, often times consisting of stolen client trust funds,  
26 by, among other things, making distributions to certain preferred creditors or third parties  
27 from funds of Girardi Keese's estate and using the funds to invest in speculative business  
28 ventures not in the firm's name. Thomas and his co-conspirators conspired by purpose

1 and design to abscond and secrete the assets of Girardi Keese, as well as funds held in  
2 trust for clients, for the purpose of enriching themselves and others while at the same  
3 time defrauding Girardi Keese's clients and creditors.

4 In virtually each instance, these transfers were made for less than  
5 reasonably equivalent value in return and during a time in which Girardi Keese was  
6 insolvent or was rendered insolvent as a result of the transfers, or when Girardi Keese  
7 was engaged or was about to engage in a business or a transaction for which the  
8 remaining assets of Girardi Keese were unreasonably small in relation to the business or  
9 transaction. Often times, for example, Thomas and others used funds from "interest on  
10 lawyers' trust accounts" (or "IOLTAs"), which accounts were intended to safeguard client  
11 funds, for illegitimate purposes. Despite the strict prohibitions on the use of funds in an  
12 IOLTA, Thomas and others used Girardi Keese's general operating accounts and IOLTAs  
13 as if they were common depositories of not only Girardi Keese client funds, but also their  
14 personal funds.

15 Hidden from the public, however, was the fact that, over the course of his  
16 four-decade career, the State Bar of California received no less than 205 complaints  
17 against Thomas alleging he misappropriated settlement money, abandoned clients, and  
18 committed other serious ethical violations. Eventually, Thomas was suspended from the  
19 practice of law in March 2021 and was finally disbarred by the California Supreme Court  
20 in July 2021.

21       C.     Retention of Special Litigation Counsel, Investigation of Potential  
22                   Avoidance Power Claims, and Settlement With BaderInk

23       In order to recover the misappropriated funds wrongfully diverted by the  
24 Debtor, the Trustee employed Greenspoon Marder, LLP ("Greenspoon") as her special  
25 avoidance power litigation counsel. According to the "Chapter 7 Trustee's Application for  
26 Authority to Employ Greenspoon Marder LLP As Special Avoidance Power Litigation  
27 Counsel Effective July 1, 2022; Declaration of Daniel A. Lev in Support Thereof" (the  
28

1 "Greenspoon Application") [Docket No. 1297] filed on July 28, 2022, the Trustee sought  
2 to employ Greenspoon on a hybrid fee basis.<sup>4</sup>

3 In sum, if the Trustee elected to commence an avoidance power claim  
4 through the preparation, filing, and prosecution of a formal complaint in this Court,  
5 Greenspoon agreed to bill its time on an hourly basis at 50% of its standard fees unless  
6 and until Greenspoon recovered under one or more of the avoidance power claims. For  
7 recoveries under any avoidance power claim which was the subject of an adversary  
8 proceeding, Greenspoon would be entitled to a success fee equal to 20% of the amount  
9 recovered under each avoidance power claim.

10 By way of example only, if the Trustee compromised an avoidance power  
11 claim in the amount of \$1,000,000 for \$100,000, Greenspoon would be entitled to 50% of  
12 its hourly rate for services rendered in preparing and prosecuting the claim (subject to  
13 approval of the Court), plus an additional \$20,000 success fee (20% of \$100,000).  
14 Greenspoon would be entitled to petition the Court for allowance of the 20% success fee  
15 separate and apart from the fees rendered on an hourly basis which could only be sought  
16 through a fee application. The Greenspoon Application was granted pursuant to the  
17 "Order Granting Chapter 7 Trustee's Application for Authority to Employ Greenspoon  
18 Marder LLP As Special Avoidance Power Litigation Counsel Effective July 1, 2022" (the  
19 "Employment Order") [Docket No. 1327] entered on August 26, 2022.

20 Based on a comprehensive review of the Debtor's books and records to  
21 determine the scope of the estate's avoidance power claims, the Trustee authorized the  
22 filing of the Complaint against BaderInk. After the Complaint was filed, BaderInk  
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24 <sup>4</sup> As explained in the Greenspoon Application, the Trustee first employed **SulmeyerKupetz, A Professional**  
25 **Corporation ("Sulmeyer")**, as the estate's special avoidance power litigation counsel pursuant to the "Order  
26 Granting Chapter 7 Trustee's Application for Authority to Employ SulmeyerKupetz, A Professional  
27 Corporation, as Special Avoidance Power Litigation Counsel" [Docket No. 893] entered by the Court on  
28 November 30, 2021. However, on July 1, 2022, the majority of the lawyers from Sulmeyer joined  
Greenspoon. As a result, the Trustee requested that Greenspoon be employed as the estate's special  
litigation counsel effective July 1, 2022, as Greenspoon was familiar with the legal issues facing the  
Trustee and the estate with respect to the Debtor's chapter 7 case.

1 challenged numerous elements of the Trustee's claims and raised numerous affirmative  
2 defenses to the Action.

3 Notably, BaderInk alleged that over the course of its business relationship  
4 with the Debtor, it provided valuable resources in the form of vehicle maintenance  
5 services for vehicles owned by the Debtor and its attorneys. BaderInk further alleged that  
6 the payments it received were immune from attack as fraudulent transfers since the  
7 Debtor was provided value under 11 U.S.C. § 550(b) (good faith transferee for value and  
8 immediate or mediate good faith transferee of such transferee). While the Trustee was  
9 prepared to defend the claims and contest the individual defenses, the Trustee  
10 determined that it was not economically beneficial to continue to prosecute the Action in  
11 light of the legal and factual obstacles and the settlement.

12 As a result, on July 24, 2023, the Trustee and BaderInk entered into that  
13 certain “Settlement Agreement and Mutual General Release” (the “BaderInk  
14 Agreement”). A true and correct copy of the BaderInk Agreement is attached hereto as  
15 Exhibit “A” and incorporated herein by reference. The Trustee believes the settlement  
16 (which is summarized below) is in the best interests of creditors of the estate and should  
17 be approved by the Court. See Declaration of Elissa D. Miller affixed hereto.

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## **SUMMARY OF SETTLEMENT**

**20** The BaderInk Agreement can be summarized as follows:

21                   • In exchange for a dismissal of the Action against BaderInk, with  
22 prejudice, BaderInk shall pay the estate the total amount of Twenty Thousand Dollars  
23 and Zero Cents (\$20,000) (the “Settlement Payment”).

24                   • The Settlement Payment shall be due on or before the fifteenth (15<sup>th</sup>)  
25 calendar day following the date the order of the Court, or other court of competent  
26 jurisdiction, approving the settlement becomes a final, unstayed order.

27                   • In addition to the Settlement Payment, BaderInk acknowledges and  
28 expressly waives any claim provided by 11 U.S.C. § 502(h) that may arise in connection

1 with the Settlement Payment. The Trustee further reserves the right to object to any  
2 proof of claim (if any), or scheduled claim, that BaderInk may have previously filed  
3 against the Debtor and the estate.

- 4           •         The parties also are exchanging limited mutual releases.<sup>5</sup>

5             Therefore, subject to the terms and conditions set forth in the BaderInk  
6 Agreement, the Trustee has agreed to dismiss the Complaint subject to approval of this  
7 Motion and upon BaderInk's subsequent compliance with the terms and conditions of the  
8 settlement.

9                          **IV.**

10                          **EFFECT OF SETTLEMENT**

11             In this case, to date, 684 claims were filed for the total amount of  
12 \$550,881,512.21. Of this amount, slightly more than \$96 million were filed as secured  
13 and \$83 million were filed as priority unsecured claims. Once all of the secured claims  
14 are reviewed and objections resolved, the Trustee estimates that secured claims will  
15 ultimately be somewhere in the range of \$30 to \$35 million. In addition, the Trustee  
16 expects that the vast majority of the priority unsecured claims should be reclassified to  
17 general unsecured claims. The assets available to pay these claims consist mostly of  
18 attorney's fees earned by the Debtor for legal services and the proceeds of avoidance  
19 actions to recover payments made by the Debtor without the receipt of reasonably  
20 equivalent value or with the actual intent to defraud. The incremental benefit of any  
21 particular settlement is impossible to quantify given this landscape, but the cumulative  
22 benefit is that the Trustee is hopeful she will recover sufficient assets to pay off the  
23 secured claims and to be able to make a distribution to unsecured creditors.

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28             <sup>5</sup> The foregoing is merely a summary of the salient terms of the BaderInk Agreement. Therefore, any party interested in the terms and conditions should read the BaderInk Agreement in its entirety.

1 V.

2 **ARGUMENT**

3 **A. The Legal Standard for Approving a Compromise of Controversy**

4 Rule 9019(a) of the Federal Rules of Bankruptcy Procedure states as  
5 follows with respect to motions brought by trustees to approve settlements:

6 On motion by the trustee and after notice and a hearing, the  
7 court may approve a compromise or settlement. Notice shall  
8 be given to creditors, the United States trustee, the debtor,  
9 and indenture trustees as provided in Rule 2002 and to any  
10 other entity as the court may direct.

11 Fed. R. Bankr. P. 9019(a).

12 As this Court is aware, compromise is favored over continued litigation.

13 See In re A&C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986), cert. denied, 479 U.S.  
14 854, 107 S. Ct. 189, 93 L. Ed. 2d 122 (1986); Port O'Call Investment Co. v. Blair (In re  
15 Blair, 538 F.2d 849, 851 (9th Cir. 1976). Generally, a compromise should be approved if  
16 it is "fair and equitable" and in "the best interests of the estate." In re Woodson, 839 F.2d  
17 610, 620 (9th Cir. 1988); In re Schmidtt, 215 B.R. 417, 424 (B.A.P. 9th Cir. 1997); St.  
18 Paul Fire & Marine Insurance Co. v. Vaughn, 779 F.2d 1003, 1010 (4th Cir. 1985); In re  
19 Continental Investment Corp., 637 F.2d 8, 11 (1st Cir. 1980). Whether a compromise will  
20 benefit or harm the debtor is immaterial.

21 Specifically, in evaluating whether to approve a compromise, courts in the  
22 Ninth Circuit must consider the following:

- 23 (a) The probability of success in litigation;  
24 (b) the difficulties, if any, to be encountered in the matter of collection;  
25 (c) the complexity of the litigation involved and the expense;  
26 inconvenience and delay necessarily attending it; and  
27 (d) the paramount interest of the creditors and a proper deference to  
28 their reasonable views.

1       A&C Properties, 784 F.2d at 1381.

2                  In considering these factors, courts are guided by two principles. First, as  
3       noted earlier, “the law favors compromise.” Blair, 538 F.2d at 851. Compromises are  
4       favored in bankruptcy, and have become “a normal part of the process of reorganization”.

5       Protective Committee for Independent Stockholders of TMT Trailer Ferry Inc. v.

6       Anderson, 390 U.S. 414, 424, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968) (quoting Case v. Los  
7       Angeles Lumber Prods. Co., 308 U.S. 106, 130, 60 S. Ct. 1, 84 L. Ed. 110 (1939)).

8       Second, a compromise should be approved unless it “fall[s] below the lowest point in the  
9       range of reasonableness”. In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983), cert.  
10      denied, 464 U.S. 822, 104 S. Ct. 88, 78 L. Ed. 2d 97 (1985). As the court in W.T. Grant

11      aptly commented:

12                  [The] responsibility of the bankruptcy judge, and ours upon  
13       review, is not to decide the numerous questions of law and  
14       fact raised by the appellants but rather to canvass the issues  
15       and see whether the settlement ‘fall[s]’ below the lowest  
16       point in the range of reasonableness . . .

17       Id., at 608.

18                  In fact,

19                  [It] is inappropriate for the court to substitute its own  
20       judgment as to the wisdom of a proposed settlement for that  
21       of the trustee. The court need not engage in an exhaustive  
22       analysis of the law and merits of each claim, or the likelihood  
23       of the outcome, as doing so would in large part defeat the  
24       purpose of settlement. Rather, the court’s role is to ensure  
25       that the trustee has exercised proper business judgment in  
26       making the decision to agree to the proposed settlement,  
27       and that the settlement “falls above the lowest possible point  
28       in the range of reasonableness.”

1       In re 110 Beaver Street P'ship, 244 B.R. 185, 187 (Bankr. D. Mass. 2000). See also In re  
2       Pacific Gas & Elec. Co., 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004).

3                  Here, under express provisions of the Bankruptcy Code, a trustee is vested  
4       with the standing and authority to seek compromises of legal and factual disputes. As  
5       such, settlements which have been negotiated by a trustee are entitled to deference.  
6       See In re Morrison, 69 B.R. 586, 592 (Bankr. E.D. Pa. 1987) (objecting creditors may not  
7       substitute their judgment for that of the trustee). Moreover, when considering these  
8       factors, the court need only canvass the issues, “a mini trial on the merits is not required.”  
9       Schmidtt, 215 B.R. at 423.

10                 In this instance, there are a variety of reasons why the Court should  
11       approve the settlement. As demonstrated, the application of the A&C Properties test to  
12       the settlement requires a finding that the compromise be approved, even over the  
13       objections of disappointed creditors.

14                 B.        The Settlement Should Be Approved Pursuant to Rule 9019(a) of the  
15                    Federal Rules of Bankruptcy Procedure

16                 For the following reasons, the Trustee submits that the settlement is in the  
17       best interests of the Debtor's estate, and satisfies the criteria established by the Ninth  
18       Circuit in A&C Properties.

19                 1.        The Probability of Success in Litigation

20                 The first factor to evaluate whether a settlement is fair and equitable is the  
21       probability of success in the litigation. A&C Properties, 784 F.2d at 1381. A precise or  
22       exact judicial determination of the likely outcome is not required because that would  
23       defeat the purpose of compromising the litigation. In re Telesphere Communications,  
24       Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994); In re Energy Coop., Inc., 886 F.2d 921,  
25       929 (7th Cir. 1989) (quoting In re Penn Central Transp. Co., 596 F.2d 1102, 1114 (3d Cir.  
26       1979)). As mentioned earlier, in the Ninth Circuit a bankruptcy court need not conduct an  
27       exhaustive investigation into the validity of the asserted claim, but rather “[i]t is sufficient  
28       that, after apprising itself of all facts necessary for an intelligent and objective opinion

1 concerning the claim's validity, the court determines that either (1) the claim has a  
2 'substantial foundation' and is not 'clearly invalid as a matter of law,' or (2) the outcome of  
3 the claim's litigation is doubtful." United States of America v. Alaska National Bank  
4 (Matter of Walsh Constr., Inc.), 669 F.2d 1325, 1328 (9th Cir. 1982).

5 The Ninth Circuit cited Walsh approvingly in A&C Properties, noting that the  
6 purpose of a compromise agreement is to allow the trustee and creditors "to avoid the  
7 expenses and burdens associated with litigating sharply contested and dubious claims,"  
8 and that the "law favors compromise and not litigation for its own sake." Blair, 538 F.2d  
9 at 851. Here, the Trustee contends, without limitation, that the settlement is fair and  
10 reasonable, in the best interests of the estate, and made according to the Trustee's  
11 sound business judgment. While the Trustee contends that she likely would prevail in the  
12 Action, to some degree, given the defenses and the legal and factual challenges being  
13 raised by BaderInk, the costs of prosecuting the Action through trial would be cost-  
14 prohibitive.

15 Understanding that settlement generally is the preferred path forward, the  
16 Trustee and her professionals had numerous written and verbal communications with  
17 BaderInk since the date the Complaint was filed. These communications and meetings  
18 involved in-depth settlement negotiations concerning the merits of the Action and any  
19 mitigating factors or defenses. After these discussions, the Trustee and her  
20 professionals analyzed the merits of BaderInk's asserted defenses and challenges to  
21 certain elements of the Trustee's claims.

22 Although there were open questions regarding the applicability of the range  
23 of challenges and defenses raised, it became clear that if BaderInk was to prevail on any  
24 of its potential defenses, then the net recovery to the estate could be significantly  
25 reduced, if not eliminated. Furthermore, the estate would incur a significant amount of  
26 additional attorneys' fees in litigating the Action. In fact, the Trustee estimates that  
27 litigating this matter through judgment could cost the estate tens of thousands of dollars,  
28 which would have included time-consuming discovery. In this regard, there would likely

1 be numerous discovery papers served, together with depositions of parties and non-  
2 parties, including potential experts. Substantial document review would also ensue. The  
3 settlement avoids these unnecessary pre-trial and trial preparation costs.

4 As a reminder, in satisfying this first element of the four-part A&C Properties  
5 test, the burden is not on a trustee to conclusively establish that a defendant would be  
6 successful at a trial on the issues raised in an action, as that would defeat the purpose of  
7 settlement and would eliminate any cost savings from the settlement. Rather, all that a  
8 trustee is required to demonstrate is that, to the reasonable satisfaction of the court, all  
9 things being considered, it is prudent to eliminate the risks of litigation to achieve specific  
10 certainty, though it might be considerably less, or more, than if the case was fought to the  
11 bitter end. See In re Aloha Racing Foundation, Inc., 257 B.R. 83 (Bankr. N.D. Ala. 2000).

12 In fact, at least one court has found that a settlement reached by a trustee  
13 could be approved even after the court had decided to rule for the trustee on a contested  
14 matter. See In re Dalen, 259 B.R. 586 (Bankr. W.D. Mich. 2001). In Dalen, the trustee  
15 sought approval of a settlement after the court had already decided to rule for the trustee,  
16 such that the estate would have profited if the settlement were rejected. The ultimate  
17 issue for the court, however, was whether the trustee exercised reasonable judgment in  
18 entering into the settlement based upon information then in her possession. As long as a  
19 court is able to make this determination, and finds that the trustee has fulfilled her  
20 fiduciary duty to the estate, the fact that creditors are objecting to the settlement is  
21 irrelevant to the court's determination under Rule 9019(a).

22 Here, there is no question that the Trustee has fulfilled her fiduciary duties  
23 to the estate by not only aggressively pursuing the recovery of the alleged fraudulent  
24 transfers, but by entering into the BaderInk Agreement. In light of the indisputable fact  
25 that the estate will receive significant funds through the settlement, it cannot be said that  
26 the Trustee has not acted in the best interests of creditors. This settlement will benefit  
27 the estate and its creditors and will end a contested matter without incurring substantial  
28 attorneys' fees and costs.

1                   **2. The Difficulties, if any, to be Encountered in the Matter of**  
2                   **Collection**

3                   Of obvious concern to the Trustee was the possibility that any judgment  
4 awarded by the Court would not be collectable. As a practical matter, there was no  
5 assurance that the Trustee would prevail in avoiding and recovering the alleged  
6 fraudulent transfers if the matter proceeded to trial. Although the Trustee did not  
7 necessarily question BaderInk's financial ability to satisfy a judgment, it is certainly  
8 possible that, through other appellate proceedings, the Trustee could find herself on the  
9 wrong end of an appellate decision that could conceivably take years to complete.  
10 Therefore, even if the Trustee prevailed in avoiding and recovering each of the avoidable  
11 transfers at issue, there remained the concern of recovery.

12                  Thus, given the amount of the claim, collection costs, even if successful,  
13 would have further reduced any net benefit to the estate, even assuming collection of the  
14 full amount of the judgment was possible. Hence, even if the Trustee prevailed in  
15 avoiding and recovering each of the avoidable transfers at issue, there remained a  
16 legitimate concern of recovery.

17                  As a result, the Trustee was required to factor into her decision the  
18 likelihood of recovering on a judgment, as well as the time that would lapse if any  
19 judgment was appealed or was subject to collection proceedings. When weighed against  
20 the continuing administrative costs that would need to be incurred to obtain a final  
21 judgment, this element of the A&C Properties test militated in favor of settlement.

22                  **3. The Complexity of the Litigation and the Expense,**  
23                  **Inconvenience and Delay Necessarily Attending It**

24                  The rationale behind public policy favoring pre-trial settlements is that  
25 litigation, depending upon its complexity, can occupy a court's docket for years on end,  
26 depleting the resources of the parties and the taxpayers while rendering meaningful relief  
27 increasingly elusive. In a bankruptcy context, such litigation costs can be particularly  
28 burdensome on the bankruptcy estate given the financial instability of the estate. See In

1 In re Grau, 267 B.R. 896 (Bankr. S.D. Fla. 2001). Here, the complexity of ensuring  
2 collection of a judgment dictated that the Trustee seek a path towards settlement. The  
3 legal and factual issues raised in the Action spanned years, are factually complex, are  
4 contested, and would be extremely time consuming and costly for the estate to prosecute  
5 and defend through possible appeals.

6 Moreover, the Debtor's chapter 7 case has been pending on the Court's  
7 docket for more than two years. If the Trustee was forced to prosecute the Action to  
8 finality, it is possible that at least one year would pass before any judgment was  
9 rendered. It is also likely that any judgment obtained by the Trustee could be the subject  
10 of appeals and further appellate litigation for years to come. During this time,  
11 administrative fees and costs would continue to escalate, reducing any net recovery for  
12 the estate. As a result, the Trustee's decision to put an end to the Action will benefit the  
13 estate and creditors alike.

14 **4. The Paramount Interest of Creditors**

15 The paramount interest of creditors which a bankruptcy court must consider  
16 in deciding whether to approve a proposed compromise, generally reflects not only the  
17 desire of creditors to obtain the maximum possible recovery, but also their competing  
18 desire that the recovery should occur in the least amount of time possible. See In re  
19 Marples, 266 B.R. 202, 206 (Bankr. D. Idaho 2001); In re Lake City RV, Inc., 226 B.R.  
20 241, 243-44 (Bankr. D. Idaho 1998). Here, the estate is not in the position to fund  
21 lengthy, difficult, and potentially uncertain litigation. The settlement resolves the  
22 competing and existing claims between the parties in a manner meant to avoid further  
23 administrative expenses and also will facilitate the distribution of assets in an orderly  
24 fashion which will allow the chapter 7 case to be timely administered.

25 As noted earlier, generally, a court should approve a proposed settlement  
26 so long as it is above "the lowest point in the range of reasonableness," giving deference  
27 to a trustee's reasonable business judgment. See In re Receivership Estate of Indian  
28 Motorcycle Mfg., Inc., 299 B.R. 8, 21 (D. Mass. 2003) ("The court may give substantial

1 deference to the business judgment of a bankruptcy trustee when deciding whether to  
2 approve a settlement"). Since the BaderInk Agreement adds significant value to the  
3 estate, while greatly reducing the administrative fees and expenses that would be  
4 incurred in prosecuting the claims, the settlement far exceeds that threshold standard  
5 and should be approved.

6       **C.     The Court Should Authorize Payment of the 20% Success Fee to**  
7       **Greenspoon as Previously Approved By the Court**

8           Typically, where special counsel has been employed and is to be  
9 compensated on a contingency fee basis, a trustee's motion seeking to obtain approval  
10 of the settlement almost invariably includes a request for payment of special counsel's  
11 fees and costs. Such is the case here, where the Employment Order specifically  
12 authorized the payment of a 20% success fee to Greenspoon upon the successful  
13 settlement of an avoidance power claim. By detailing how much compensation is being  
14 sought on a contingency basis, the Motion enables the Court and interested parties to  
15 determine that the calculations are consistent with the Greenspoon Application and  
16 Employment Order.

17           Although the Trustee could, conceivably, request that Greenspoon file a  
18 separate application for the success fee, this would be highly inefficient and would be a  
19 waste of judicial resources. Since this is one of more than 100 actions filed, the Court  
20 could soon find itself burdened with a multitude of separate fee applications each time an  
21 avoidance power action is compromised. Because the Trustee hopes to save the time  
22 and expense of separate applications and additional notices to creditors, the Trustee  
23 believes this "combined" compromise/compensation motion is appropriate under 11  
24 U.S.C. §§ 105(a), 328(a), and 330(a). See In re Olson, 2006 WL 2433448 (Bankr. D.  
25 Idaho July 24, 2006) (court recognizes propriety of motions to approve compromises that  
26 also include requests for payment of court-approved contingency fees); In re H.K. Porter  
27 Co., Inc., 183 B.R. 96 (Bankr. W.D. Pa. 1995) (in determining dispute over ownership of  
28 settlement proceeds, court referenced previously approved motion for authority to settle

1 litigation and for authority to pay attorney a 50% contingency fee out of settlement  
2 proceeds).

3 **VI.**

4 **CONCLUSION**

5 Based on the foregoing, the Trustee respectfully requests that the Court  
6 grant the Motion in its entirety, and for such other and further relief as the Court deems  
7 appropriate under the circumstances.

8 DATED: July 25, 2023

**Greenspoon Marder LLP**

9  
10 By: /s/ Daniel A. Lev

11 Daniel A. Lev  
12 Attorneys for Elissa D. Miller, Chapter 7  
13 Trustee

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## **DECLARATION OF ELISSA D. MILLER**

I, Elissa D. Miller, state as follows:

3           1. I am an attorney at law, duly qualified and licensed to practice before  
4 this Court, and am the duly appointed, qualified, and acting chapter 7 trustee for the  
5 estate of the debtor Girardi Keesee (the “Debtor” or “Girardi Keesee”). I have personal  
6 knowledge of the facts stated in this Declaration, and if called to testify, could and would,  
7 without waiver of any applicable privilege, testify that the facts stated in this Declaration  
8 are true and correct to the best of my knowledge and information.

9           2. I make this declaration in support of my “Chapter 7 Trustee’s Motion  
10          for Order Authorizing Compromise of Controversy Re BaderInk Pursuant to Rule 9019 of  
11          the Federal Rules of Bankruptcy Procedure and Authorizing Payment of Contingency Fee  
12          to Special Avoidance Power Litigation Counsel; Memorandum of Points and Authorities;  
13          Declaration of Elissa D. Miller in Support Thereof” (the “Motion”), through which I seek,  
14          among other things, an order authorizing and approving, pursuant to Rule 9019(a) of the  
15          Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 9013, a settlement  
16          agreement by and between me, in my capacity as trustee, on the one hand, and  
17          defendant, BaderInk, a California corporation (“BaderInk” or the “Defendant”), on the  
18          other hand. In sum, in exchange for limited mutual releases, and dismissal of the action  
19          against BaderInk, with prejudice, BaderInk will pay the estate the total amount of  
20          \$20,000. BaderInk also agrees to waive any claim provided by 11 U.S.C. § 502(h) that  
21          may arise in connection with the settlement payment. A true and correct copy of the  
22          BaderInk Agreement is attached hereto as Exhibit “A” and incorporated herein by  
23          reference. As part of the Motion, I also seek authority to pay Greenspoon Marder, LLP  
24          (“Greenspoon”), special avoidance power litigation counsel for the estate, the sum of  
25          \$4,000 from the settlement proceeds, representing the 20% contingency fee authorized  
26          by the Court pursuant to its “Order Granting Chapter 7 Trustee’s Application for Authority  
27          to Employ Greenspoon Marder LLP As Special Avoidance Power Litigation Counsel

1 Effective July 1, 2022" (the "Employment Order") [Docket No. 1327] entered on August  
2 26, 2022.

3           3. As I ultimately learned after my appointment as trustee, despite all  
4 appearances, Girardi Keese was an illicit and felonious business enterprise that engaged  
5 in a decades-long fraud resulting in the wrongful diversion and misappropriation of tens of  
6 millions of dollars of client and partnership funds. Emblematic of the rampant fraud and  
7 pervasive misappropriation of client and creditor funds, during a time when Girardi Keese  
8 was in a precarious financial state, and was not paying its creditors, Thomas and his co-  
9 conspirators began a systematic process of draining the available cash, often times  
10 consisting of stolen client trust funds, by, among other things, making distributions to  
11 certain preferred creditors or third parties from funds of Girardi Keese's estate and using  
12 the funds to invest in speculative business ventures not in the firm's name. Thomas and  
13 his co-conspirators conspired by purpose and design to abscond and secrete the assets  
14 of Girardi Keese, as well as funds held in trust for clients, for the purpose of enriching  
15 themselves and others while at the same time defrauding Girardi Keese's clients and  
16 creditors.

17           4. In virtually each instance, these transfers were made for less than  
18 reasonably equivalent value in return and during a time in which Girardi Keese was  
19 insolvent or was rendered insolvent as a result of the transfers, or when Girardi Keese  
20 was engaged or was about to engage in a business or a transaction for which the  
21 remaining assets of Girardi Keese were unreasonably small in relation to the business or  
22 transaction. Often times, for example, Thomas and others used funds from "interest on  
23 lawyers' trust accounts" (or "IOLTAs"), which accounts were intended to safeguard client  
24 funds, for illegitimate purposes. Despite the strict prohibitions on the use of funds in an  
25 IOLTA, Thomas and others used Girardi Keese's general operating accounts and IOLTAs  
26 as if they were common depositories of not only Girardi Keese client funds, but also their  
27 personal funds.

28

1               5.     Based on a comprehensive review of the Debtor's books and records  
2 meant to determine the scope of the estate's avoidance power claims, I authorized the  
3 filing of an adversary proceeding against BaderInk seeking the avoidance and recovery  
4 of fraudulent transfers in the total aggregate amount of \$102,917. After the operative  
5 complaint was filed, I learned that BaderInk was challenging numerous elements of the  
6 estate's claims and was raising numerous affirmative defenses to the action, including  
7 defenses under 11 U.S.C. § 550(b). While I was prepared to contest the challenges to  
8 the estate's claims and the individual defenses, I determined that it was not economically  
9 beneficial to continue to prosecute the action in light of the legal and factual obstacles  
10 and the proposed settlement.

11               6.     In my opinion, the settlement is fair and reasonable, in the best  
12 interests of the estate, and was made according to my sound business judgment. While I  
13 believe the estate's claims have merit, given the defenses and the legal and factual  
14 challenges being asserted by BaderInk, the costs of prosecuting the action through and  
15 after trial would be cost-prohibitive. Understanding that settlement is always the  
16 preferred path forward, my professionals and I carefully reviewed BaderInk's potential  
17 defenses when considering the settlement offers being discussed. Although there were  
18 open questions regarding the applicability of the range of challenges and defenses  
19 raised, it became clear that if BaderInk was to prevail on any of its potential defenses,  
20 then the net recovery to the estate could be significantly reduced, if not eliminated.  
21 Furthermore, the estate would incur a significant amount of additional attorneys' fees in  
22 litigating the action through final judgment, including post-judgment remedies. Therefore,  
23 I believe the settlement is in the best interests of the estate as it eliminates the risks of  
24 litigation to achieve specific certainty.

25               7.     Of obvious concern to me was the possibility that any judgment  
26 awarded by the Court would not be collectable. As a practical matter, there was no  
27 assurance that I would prevail in avoiding and recovering the alleged fraudulent transfers  
28 if the matter proceeded to trial. Although I had no reason to necessarily question

1 BaderInk's financial ability to satisfy a judgment, it is certainly possible that, through other  
2 appellate proceedings, the estate could find itself on the wrong end of an appellate  
3 decision that could conceivably take years to complete. Therefore, even if I prevailed in  
4 avoiding and recovering each of the avoidable transfers at issue, there remained the  
5 concern of recovery. As a result, I was required to factor into my decision the likelihood  
6 of recovering on a judgment, as well as the time that would lapse if any judgment was  
7 appealed or was subject to collection proceedings. When weighed against the continuing  
8 administrative costs that would need to be incurred to obtain a final judgment, this  
9 element of the A&C Properties test militated in favor of settlement.

10       8. Here, the complexity of ensuring collection of a judgment dictated  
11 that I seek a consensual resolution. The legal and factual issues raised in the action are  
12 factually complex, are contested, and would be extremely time consuming and costly for  
13 the estate to prosecute and defend through possible appeal. Moreover, the Debtor's  
14 chapter 7 case has been pending on the Court's docket for more than two years. If I was  
15 forced to prosecute the action to finality, and then seek to enforce post-judgment  
16 remedies, it is possible that at least one year would pass before any judgment was  
17 rendered. It is also likely that any judgments obtained would be the subject of appeals  
18 and further appellate litigation for years to come. During this time, administrative fees  
19 and costs would continue to escalate, reducing any net recovery for the estate. As a  
20 result, my decision to put an end to the action will benefit the estate and creditors alike.

21       9. In addition, the estate is not in the position to fund lengthy, difficult,  
22 and potentially uncertain litigation. The settlement resolves the competing and existing  
23 claims between the parties in a manner meant to avoid further administrative expenses  
24 and also will facilitate the distribution of assets in an orderly fashion which will allow the  
25 chapter 7 case to be timely administered. Since the BaderInk Agreement adds significant  
26 value to the estate, while greatly reducing the administrative fees and expenses that  
27 would be incurred in prosecuting the avoidance power claims, the settlement does not fall  
28 below the lowest point in the range of reasonableness and it should be approved.

1                   10. Finally, the Court should also authorize payment of the 20% success  
2 fee to Greenspoon as previously approved by the Court. Although I could, conceivably,  
3 request that Greenspoon file a separate application for the success fee, this would be  
4 highly inefficient and would be a waste of judicial resources. Since this is one of more  
5 than 100 actions filed, the Court could soon find itself burdened with a multitude of  
6 separate fee applications each time an avoidance power action was compromised.  
7 Because I hope to save the time and expense of having Greenspoon file separate  
8 applications involving additional notices to creditors, I believe the contingency fee can  
9 and should be approved as part of this Motion.

10                  I declare under penalty of perjury under the laws of the United States of  
11 America that the foregoing is true and correct.

12                  Executed this 24<sup>th</sup> day of July, 2023, at Los Angeles, California.

13                    
14                  Elissa D. Miller, Chapter 7 Trustee

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28

# EXHIBIT A

## **SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE**

This “Settlement Agreement and Mutual General Release” (the “**AGREEMENT**”) is entered into as of July 24, 2023, by and between Elissa D. Miller (the “**TRUSTEE**”), in her sole and exclusive capacity as the duly appointed, qualified, and acting chapter 7 trustee for the bankruptcy estate (the “**ESTATE**”) of the debtor Girardi Keese (the “**DEBTOR**”) and as the Successor-in-Interest Trustee of the Girardi Keese Client Trust Accounts, and the successors and assigns of the **TRUSTEE** in any capacity, on the one hand, and BaderInk, a California corporation (“**BADERINK**”), on the other hand, as follows:

### **RECITALS**

A. On December 18, 2020 (the “**PETITION DATE**”), petitioning creditors Jill O’Callahan, as successor in interest to James O’Callahan, Robert M. Keese, John Abassian, Erika Saldana, Virginia Antonio, and Kimberly Archie (collectively, the “**PETITIONING CREDITORS**”) commenced an involuntary petition for relief under chapter 7 of title 11 of the United States Code (the “**BANKRUPTCY CODE**”) against the **DEBTOR** in the United States Bankruptcy Court, Central District of California, Los Angeles Division (the “**COURT**” or “**BANKRUPTCY COURT**”), styled In re Girardi Keese, bearing Case No. 2:20-bk-21022-BR.

B. On December 24, 2020, **PETITIONING CREDITORS** caused to be filed their “Motion for Appointment of Interim Trustee Pursuant to 11 U.S.C. § 303(g); Memorandum of Points and Authorities”. On January 5, 2021, the **COURT** entered its “Order Granting ‘Motion of Petitioning Creditors for Appointment of Interim Trustee Pursuant to 11 U.S.C. 303(g)’”. On January 6, 2021, the Office of the United States Trustee filed its “(Corrected) Notice of Appointment of Chapter 7 Trustee (11 U.S.C. §§ 303(g) and 701)” pursuant to which, among other things, Elissa D. Miller was appointed interim chapter 7 trustee for the **DEBTOR’S ESTATE**.

C. On January 13, 2021, the **COURT** entered its “Order Directing: (1) the Clerk of Court to Immediately Enter an Order for Relief Under Chapter 7; (2) the United States Trustee to Immediately Appoint a Chapter 7 Trustee; (3) the Debtor to File All Schedules and Related Documentation for Chapter 7 Case Within Fourteen Days of the Entry of This Order; and (4) Vacating February 16, 2021 Status Conference”. On January 13, 2021, the Clerk of Court entered its “Order for Relief and Order to File Schedules, Statements and List(s)”. On January 13, 2021, the Office of the United States Trustee filed its “Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment As Interim Trustee” pursuant to which, among other things, Elissa D. Miller was appointed and accepted her appointment as chapter 7 trustee for the **DEBTOR’S ESTATE**, and she continues to act in that capacity as well as the Successor-in-Interest Trustee of the Girardi Keese Client Trust Accounts.

D. The **TRUSTEE** warrants and represents that, in her capacity as chapter 7 trustee and Successor-in-Interest Trustee of the Girardi Keese Client Trust Accounts, she is the sole and exclusive holder of the **CLAIMS** (as hereinafter defined) which are the subject of this **AGREEMENT**.

E. On January 4, 2023, the **TRUSTEE**, as plaintiff, caused to be filed her “Complaint for (1) Avoidance and Recovery of Fraudulent Transfers, (2) Preservation of Fraudulent Transfers, and (3) Disallowance of Claims” (the “**COMPLAINT**”) against **BADERINK**, as defendant, giving rise to the adversary proceeding entitled Elissa D. Miller v. BaderInk, bearing Adv. No. 2:23-ap-01017-BR (the “**ACTION**”), pursuant to which the **TRUSTEE** sought, among other things, to avoid and recover, under both federal and state law, certain alleged fraudulent transfers.

F. **BADERINK** denies that the **TRUSTEE** is entitled to avoid and recover funds as fraudulent transfers, under either federal or state law, as alleged in the **COMPLAINT**.

G. The parties now desire to resolve the **ACTION** and the claims for relief asserted therein and to avoid the uncertainty, costs, and expenses associated with adjudication of the **ACTION**.

## **PROVISIONS**

NOW, THEREFORE, in consideration of the foregoing Recitals and of the mutual agreements, covenants, and releases set forth herein, and for other good and valuable consideration, the sufficiency and adequacy of which is acknowledged by the parties, the parties hereto agree as follows:

1. **Recitals.** The recitals contained in paragraphs A through G (the “**RECITALS**”) are an integral part of this **AGREEMENT** and are incorporated herein by reference.

2. **Rules of Construction.** The following rules of construction govern and apply to the interpretation and construction of this **AGREEMENT**:

2.1. Whenever the name of the **TRUSTEE** is used, it includes all current and former agents, employees, attorneys, accountants, successors, and assigns of the **TRUSTEE** and all other persons and entities for whose acts and omissions the **TRUSTEE** may be held liable.

2.2. Whenever the name of **BADERINK** is used, it includes all related and affiliated entities, all current and former partners, owners, shareholders, members, agents, attorneys, employees, officers, directors, successors, and assigns of **BADERINK**, as applicable, and their relatives and affiliates, and all other persons and entities for whose acts and omissions **BADERINK** may be held liable.

2.3. Each party acknowledges that it has participated in the drafting of this **AGREEMENT** and reviewed the terms of the **AGREEMENT** and, as such, no rule of construction shall apply in any interpretation of this **AGREEMENT** which might result in this **AGREEMENT** being construed in favor of or against either of them, including, without limitation, any rule of construction to the effect that ambiguities ought to be resolved against the drafting party.

2.4. The underscored word or words appearing at the commencement of sections of this **AGREEMENT** are intended only as a guide and are not intended, and should not be construed, as controlling, enlarging, restricting, explaining, or modifying, in any manner, the language or meaning of those sections or subsections.

3. **Settlement.** In consideration for the promises made in this **AGREEMENT**, including, without limitation, dismissal of the **ACTION** against **BADERINK**, with prejudice, shall pay the **ESTATE** the total amount of Twenty Thousand Dollars and Zero Cents (\$20,000) (the “**SETTLEMENT PAYMENT**”). The **SETTLEMENT PAYMENT** shall be due on or before the fifteenth (15<sup>th</sup>) calendar day following the date the order of the **BANKRUPTCY COURT**, or other court of competent jurisdiction, approving this **AGREEMENT** becomes a final, unstayed order. The **SETTLEMENT PAYMENT** shall be made by wire (pursuant to instructions provided by the **TRUSTEE**) or business or cashier’s check made payable to “Elissa D. Miller, Chapter 7 Trustee for Girardi Keese”, and by delivering said business or cashier’s check to Elissa D. Miller, Chapter 7 Trustee, Greenspoon Marder LLP, 1875 Century Park East, Suite 1900, Los Angeles, California 90067, or by wire pursuant to wiring instructions to be provided to **BADERINK** upon request.

4. **No 11 U.S.C. § 502(h) Claim.** In addition to the **SETTLEMENT PAYMENT**, **BADERINK** hereby acknowledges and expressly waives any claim provided by 11 U.S.C. § 502(h) that may arise in connection with the **SETTLEMENT PAYMENT**. The **TRUSTEE** further reserves the right to object to any proof of claim (if any), or scheduled claim, that **BADERINK** may have previously filed against the **DEBTOR** and the **ESTATE**.

5. **Dismissal of Action With Prejudice Upon Bankruptcy Court Approval and Payment of Settlement Payment.** In consideration for the promises made in this **AGREEMENT**, the **TRUSTEE** shall, within five (5) business days after confirmation that the **SETTLEMENT PAYMENT** has been honored by the **TRUSTEE’S** depository institution, file with the **COURT** a request for dismissal dismissing the entire **ACTION** against **BADERINK** with prejudice (the “**REQUEST**”).

6. **Mutual Release.** Except for: (a) a breach of this **AGREEMENT** and claims arising by reason of such breach; (b) enforcement of rights, obligations, and duties arising under this **AGREEMENT**; and (c) the satisfaction of the executory provisions of this **AGREEMENT**, in consideration for the provisions of this **AGREEMENT**, the **TRUSTEE**, on the one side, and **BADERINK**, on the other side, do hereby fully and finally compromise and settle with, and forever release, remise, relieve, waive, relinquish, and discharge each other from any and all claims, complaints, rights, manner of action or actions, cause or causes of action, suits, debts, dues, demands, obligations, charges, costs, expenses (including but not limited to attorneys’ fees), sums of money, controversies, damages, accounts, agreements, covenants, contracts, judgments, reckonings, liens, and liabilities of every kind and nature whatsoever, whether at law or in equity, whether based upon statute, common law, or otherwise, whether matured, contingent, or non-contingent, whether direct or indirect, whether known or unknown, whether suspected or unsuspected, whether or not hidden, and without regard to the subsequent discovery or existence of different or additional facts, which the **TRUSTEE** and **BADERINK** ever had, now have, or may claim to have against each other (the “**CLAIM(S)**”) arising out of, whether or not based on, asserted in, or in connection with any matter, cause, claim, or thing or related to the

**ACTION**, or the **DEBTOR**, or its members, principals, owners, employees, and/or their affiliates, agents and relatives, any of the above now accrued or hereafter accruing. The releases herein only arise out of the **DEBTOR'S** case and the **TRUSTEE** is not releasing any claims against **BADERINK**, if any, unrelated to the **DEBTOR'S** case. However, the **TRUSTEE** represents that she is unaware of any such claims.

**7. Final Release and Bar.** The parties hereto hereby acknowledge that it is their intention that this **AGREEMENT** shall be effective as a full and final release of, and as a bar with prejudice to, each and every **CLAIM** which the parties have or had against one another as is applicable, directly or indirectly. In connection with such waiver and relinquishment, the parties acknowledge that they or their attorneys may hereafter discover facts different from or in addition to the facts that they now know or believe to be true with respect to the subject matter of this **AGREEMENT**, but that it is their intention to hereby fully, finally, absolutely, and forever release any and all **CLAIMS** released pursuant to Section 6, above, which now do exist, may exist, or heretofore have existed between them, and that in furtherance of such intentions the release as given herein by the parties shall be and remains in effect as a full and complete release of the **CLAIMS** released in Section 6 above, notwithstanding the discovery of any such different or additional facts.

Notwithstanding the discovery of any such additional or different facts, the parties certify that they have read Section 1542 of the California Civil Code set forth below:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES  
NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
FAVOR AT THE TIME OF EXECUTING THE RELEASE  
AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
WITH THE DEBTOR OR RELEASED PARTY.**

The parties hereto do hereby waive application of Section 1542 of the California Civil Code and any other statutes, common law rights, rules, or the like which may operate to limit the intent of this **AGREEMENT** with respect to the **CLAIMS** released in Section 6 above. The parties understand and acknowledge the significance and consequence of this waiver of Section 1542 of the California Civil Code is that even if they should eventually suffer additional damages on account of the **CLAIMS** released in Section 6 above, they will not be permitted to make any claim for such damages.

**8. Covenant Not to Sue.** The **TRUSTEE** and **BADERINK** hereby covenant and agree that they will forever refrain and forbear from commencing, instituting, or prosecuting any lawsuit, action, or other proceeding against each other based on, arising out of, or in connection with the **CLAIMS** released in Section 6 above. Notwithstanding the foregoing, nothing contained in this **AGREEMENT** shall preclude the **TRUSTEE** or **BADERINK** from exercising their respective rights in the event the other party breaches any of its obligations under this **AGREEMENT**.

**9. Denial of Liability.** Liability for any claims that the **TRUSTEE** has or may have asserted is denied by **BADERINK**. This **AGREEMENT** is a compromise of disputed claims and shall never be construed as an admission of liability or responsibility for any purpose by either party.

**10. Mutual Warranties and Representations.** The **TRUSTEE** and **BADERINK** hereby represent and warrant to each other that as of the date of this **AGREEMENT**:

**10.1** The **TRUSTEE** and **BADERINK** have each consulted with, or have had the opportunity to consult with, an attorney of their choosing, and each of them has carefully read this **AGREEMENT**, fully understands the **AGREEMENT** and its terms and provisions, and each of them either is relying upon legal advice in entering into this **AGREEMENT** voluntarily, or has determined, without being under any duress or coercion, not to rely upon legal advice in entering into this **AGREEMENT**.

**10.2** The **TRUSTEE** and **BADERINK** have each made such investigation of the facts and matters pertaining to this **AGREEMENT** and settlement of the **ACTION** as each of them has deemed necessary.

**10.3** Except for the statements, representations, and promises contained in this **AGREEMENT**, the parties hereto are not relying upon any statement, representation, or promise from the other party hereto or any of the other party's agents, employees, representatives, or attorneys in entering into this **AGREEMENT**.

**10.4** Each person executing this **AGREEMENT** on behalf of a party hereto has been duly authorized to execute this **AGREEMENT** on behalf of the party and to bind the party to the terms and provisions of this **AGREEMENT** by appropriate appointment, delegation of authority, corporate by-laws, or board resolutions.

**10.5** The **TRUSTEE** represents and warrants, which representation and warranty is a material inducement to the execution of the **AGREEMENT**, that, in her capacity as chapter 7 trustee of the **ESTATE**, she is the sole holder of the **CLAIMS** which are the subject of this **AGREEMENT**, with the sole right to initiate, litigate, and compromise said **CLAIMS**.

**10.6** As to the matters addressed herein, this **AGREEMENT** is intended to be final and binding upon the parties hereto, regardless of any mistake of fact or law made by the parties hereto. The **TRUSTEE** and **BADERINK** each assume the risk of any mistake of fact or law in relation to this **AGREEMENT** and may not set aside this **AGREEMENT**, or any portion thereof, based on the subsequent discovery of any such mistake of fact or law.

**11. Complete Agreement.** This **AGREEMENT** contains the entire agreement between the parties with respect to the matters addressed in this **AGREEMENT** and the **AGREEMENT** supersedes all prior agreements, whether written or oral. Should a dispute arise under this **AGREEMENT**, neither the **TRUSTEE** nor **BADERINK** may introduce evidence of any

alleged prior or contemporaneous agreements or understandings to alter the terms of this **AGREEMENT**.

**12. No Oral Modifications.** This **AGREEMENT** may be amended only in a writing signed by the parties hereto.

**13. Retention of Jurisdiction.** The **BANKRUPTCY COURT** shall retain exclusive jurisdiction to resolve any controversy or claim arising out of or relating to this **AGREEMENT**.

**14. Attorneys' Fees and Costs.** The **TRUSTEE** and **BADERINK** shall each bear their own costs and attorneys' fees, if any, with regard to any aspect of the **TRUSTEE'S CLAIMS** against **BADERINK**, including, with respect to the **COMPLAINT**, the **ACTION**, and the negotiation, drafting, and execution of this **AGREEMENT**. However, the **TRUSTEE** and **BADERINK** agree that, in the event of any legal or equitable action or arbitration proceeding required to enforce or defend this **AGREEMENT**, the prevailing party, as that term is defined by California Civil Code § 1717, shall be entitled to an award of its attorneys' fees, costs, and expenses incurred in connection with the enforcement or defense of this **AGREEMENT**, in addition to any other damages it may suffer as a result of the violation or breach of this **AGREEMENT**, or other relief to which it may be entitled.

**15. Successors.** This **AGREEMENT** shall bind and inure to the benefit of the parties hereto and their respective successors, predecessors, and assigns.

**16. Severability.** Should any provision of this **AGREEMENT** be unenforceable, those provisions shall be considered severable, and the remaining provisions shall remain in effect.

**17. Governing Law.** This **AGREEMENT** shall be construed and governed by the laws of the State of California.

**18. Counterparts.** This **AGREEMENT** may be executed in counterparts and by facsimile signature with the same force and effect as if all original signatures were set forth in a single document. This **AGREEMENT** shall not be binding until signed by both parties.

**19. Further Assurances.** The **TRUSTEE** and **BADERINK** hereby agree, on request of the other party hereto, to perform all acts reasonably necessary, including execution of further documents, to effectuate the intent of this **AGREEMENT**.

**20. Good Faith and Fair Dealing.** This **AGREEMENT** was negotiated in good faith, at arm's length, and for good, reasonable and fair consideration as to all parties.

*[Remainder of page intentionally left blank]*

**21. Bankruptcy Court Approval.** This AGREEMENT is explicitly conditioned upon entry of an order by the BANKRUPTCY COURT, or other court of competent jurisdiction, approving the terms and conditions of this AGREEMENT. In the event the BANKRUPTCY COURT, or other court of competent jurisdiction, does not approve this AGREEMENT, it will be null and void.

**BY SIGNING THIS AGREEMENT, I CERTIFY THAT I HAVE READ THIS AGREEMENT AND UNDERSTAND ALL OF ITS TERMS, AND I VOLUNTARILY AGREE TO THE TERMS AS SET FORTH IN THIS AGREEMENT.**

**ELISSA D. MILLER, Solely in her capacity as chapter 7 trustee for the bankruptcy estate of Girardi Keese**

By:   
Elissa D. Miller, Chapter 7 Trustee

**BADERINK, a California corporation**

By:   
Bader Bedro  
Its: President

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 333 South Grand Avenue, Suite 3400, Los Angeles, CA 90071.

A true and correct copy of the foregoing document entitled (*specify*): **CHAPTER 7 TRUSTEE'S MOTION FOR ORDER AUTHORIZING COMPROMISE OF CONTROVERSY RE BADERINK PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND AUTHORIZING PAYMENT OF CONTINGENCY FEE TO SPECIAL AVOIDANCE POWER LITIGATION COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ELISSA D. MILLER IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) July 25, 2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

**See Attached ECF List**

Service information continued on attached page.

**2. SERVED BY UNITED STATES MAIL:**

On (date) July 25, 2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Barry Russell  
U.S. Bankruptcy Court  
Roybal Federal Building  
255 E. Temple Street, Suite 1660  
Los Angeles, CA 90012

Attorneys for Defendant:  
Leslie Cohen, Esq.  
Leslie Cohen Law PC  
1615-A Montana Avenue  
Santa Monica, CA 90403

Service information continued on attached page.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) July 25, 2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 25, 2023	Cheryl Caldwell	/s/Cheryl Caldwell
Date	Printed Name	Signature

ADDITIONAL SERVICE INFORMATION (if needed):

**1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")**

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